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Knowlton v. Wood River Medical Center Respondent's Brief 2 Dckt. 37360

IN THE SUPREME COURT FOR THE STATE OF IDAHO

LESIA KNOWLTON, Claimant/Appellant/ Cross-Respondent, v. WOOD RIVER MEDICAL CENTER, Employer, and FREMONT COMPENSATION INSURANCE GROUP, Surety, and IDAHO INSURANCE GUARANTY ASSOCIATION, Party of Interest, Defendants/Respondents/ Cross-Appellants,	Supreme Court No. 37360

RESPONDENTS/CROSS-APPELLANTS' REPLY BRIEF

Appeal from the Idaho Industrial Commission

R.D. Maynard, Chairman

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I. Introduction

This brief is in reply to the arguments made by Claimant related to Defendants' cross-appeal of the Industrial Commission's denial of their Motion to Strike Claimant's Post-Hearing Reply Brief and the questions raised regarding the Industrial Commission's jurisdiction, or lack thereof, related to the Idaho Insurance Guaranty Association and the ability to award attorney fees under the provisions of the Guaranty Association Act. Claimant relies upon a subsequent decision by the Industrial Commission in ***Marlene Griffith v. Firstbank Northwest, et. al.***, I.C. 1999-031588, as a basis for her arguments in response. However, Claimant fails to inform the Court that the decision itself is also the subject of a similar appeal, which again asks this Court to consider the extent and scope of the Industrial Commission's jurisdiction over the Guaranty Association. Defendants continue to contend that should the Court in the present matter reverse the factual findings and remand the case for further proceedings, that the extent of those proceedings would be limited solely to the areas expressly defined by statute for the Commission.

Claimant raises what are best called "policy arguments" in favor of their interpretation of the Commissions Judicial Rules of Practice as they relate to post-hearing briefing and suggest that a claimant should be given the unfair advantage of extensive briefing when compared to that available to a defendant. She has propounded no persuasive case law to establish that a defendant in a worker's compensation case should be constrained to respond to arguments raised and present their own case in less pages than those available to claimant. The Rules, of which the comments are a part, define the proper parameters for the fair resolution of issues brought before the Commission.

As such, Defendants respectfully request that in the alternative that the Court reverses the Industrial Commission as requested by Claimant, that it issue an opinion instructive on the issues raised in cross-appeal.

II. The Industrial Commission erred by denying Defendants' Motion to Strike Claimant's Post-Hearing Reply Brief.

Contrary to Claimant's arguments, Defendants have demonstrated that the Industrial Commission failed to adhere to its own procedural rules and guidelines when it refused to grant the Motion to Strike. Only recently has there arisen confusion about the page limits contained in Judicial Rule of Procedure 11(A) and its subsequent Comment. The claimants' bar has pounced upon the argument that the Rule should be read to give them an edge in post-hearing briefing, suggesting that they should be given double the number of pages available to present their arguments. In the past, it was common practice for claimants' counsel to submit an opening brief that was 20 to 25 pages long, reserving 5 to 10 pages for rebuttal in the responsive brief. Defendants' counsel have always known that they were limited solely to thirty pages, forcing them to address the arguments raised in the initial brief and attempt counter any arguments that may be raised in the short reply. Now, to adopt the approach that Claimant's counsel has recommended, defendants would face the insurmountable task of responding to sixty pages of arguments in half the space. It is impossible to see how such an interpretation of the J.R.P. could be considered fair and practical.

As with her later arguments, Claimant relies upon a recent decision of the Industrial Commission in the case of ***Marlene Griffith v. Firstbank Northwest, et. al.***, I.C. 1999-031588, as the basis for the argument that the motion was properly denied. As mentioned above, one of the issues presently on appeal in ***Griffith*** is the page limit discrepancy. Claimant focuses upon the use of the word "briefing" in the comment to J.R.P. 11(A) and contends that it has both a

plural and singular meaning, and that fairness dictates that it should be interpreted to only in the singular, allowing each brief submitted to be thirty pages long. Claimant then goes on to argue, that to find otherwise, would allow a claimant to ". . . put nothing in its initial brief, leaving the Defendant with nothing to "reply" to," implying that the claimant could then swoop in with a subsequent response that covers the issues at hearing. Unfortunately, Claimant's logic is flawed in that it ignores the requirements of due process and judicial procedure mandating that all issues to be tried be addressed in the opening brief. This Court was clear in holding that under Idaho case law issues addressed by an administrative tribunal must be presented such that new issues cannot be raised without first serving an affected party with fair notice and providing a full opportunity to meet the issue. ***See, White v. Idaho Forest Indus.***, 98 Id 784, 786, 527 P. 2d 887 (1977). A claimant submitting a brief with nothing to reply to runs the risk of waiving the ability to respond.

The truly prejudicial effect of the Industrial Commission's decision in the present matter is evidenced by the briefing by Claimant on appeal. The majority of issues raised by Claimant on appeal appeared in her "reply" brief and subsequent briefing on reconsideration. The fact that these issues were not raised in the initial briefing is interesting and important with respect to the waiver argument. If the Industrial Commission had properly struck Claimant's reply brief at the outset, we would most likely not be before the Court today. Fortunately, the Commission properly addressed the factual issues before it and found in Defendants' favor. As before, the unambiguous language and comment of J.R.P. 11 imposes a thirty (30) post-hearing briefing page limit and as a matter of due process Defendants are entitled to the benefit of such procedural protection. ***See generally, Madrano v. Neibaur***, 136 Idaho 767, 40 P.3d 125 (2002).

III. The Industrial Commission does not have subject matter jurisdiction over the Idaho Insurance Guaranty Association Act.

With respect to Claimant's arguments that the Industrial Commission does have subject matter jurisdiction over the actions to be taken by the Idaho Guaranty Association, Claimant again turns to the recent decision of ***Marlene Griffith v. Firstbank Northwest, et. al., supra***. She focuses heavily upon the Commission's assertion that the defendants in ***Griffith*** must pay in full all claims made against them in that matter. The author(s) of ***Griffith*** attempt to interpret the scope if the Insurance Guaranty Act, as it relates to worker's compensation law, to justify the intended result. Unfortunately, for the same reasons that ***Griffith*** is on appeal, the Commission has overstepped its bounds and entered into an area not within their statutory powers and authority.

Defendants acknowledge that Idaho Code § 41-3605(7) defines what is a "covered claim" under the Act; however, that language alone does not extend to the Industrial Commission the power to enforce an order against the Association for payment of a worker's compensation judgment. Defendants contend that the Industrial Commission has the authority to determine the amount of liability that could have been assessed against the defunct surety had it not come under the auspices of the Guaranty Act. To the contrary, the further provisions of the Guaranty Act then serve to govern how much, if any, of the liability assessed is to be paid.

That difference alone between the Idaho version of the Act and that of Minnesota does not serve to invalidate the arguments previously raised. Although Defendants understand Claimant's interest in seeing the Guaranty Association treated in the same light as the now defunct surety, that is not the reason behind the creation of this statutorily created body. As previously argued, the Association is not to be treated as the last resort if other sources of compensation exist to reimburse a claimant.

Claimant suggests that the record is devoid of any proof that Claimant's bills could be or were being covered by a third-party insurer, although she acknowledges that she was receiving Social Security disability and Medicaid benefits. To the contrary, Defendants assert that Claimant failed to present any outstanding medical expenses into evidence that had not been paid or reimbursed by third-party sources. Claimant bears the burden of proof to establish the amount of any unpaid or outstanding medical expenses, not Defendants. Claimant's Social Security file, which is quite voluminous, was presented as a hearing exhibit and is before the Court on appeal.

Notwithstanding the above, the Idaho Guaranty Association Act implicitly sets forth the statutory framework for the administration of claims, including what aspects of each claim should be given deference or priority over others. Without the Act, claimants would be faced with the untenable position of trying to recover benefits through the complicated bankruptcy process.

Claimant next refers the Court to the Commission's finding in ***Griffith*** that the medical expenses at issue in that case were "typically excluded from private health policies," suggesting that the expenses existing in the present matter may also be similarly situated. Unfortunately, this is going to be a major issue before the Court in the ***Griffith*** appeal for the Defendants. There is no evidence in the record below in ***Griffith*** that this was expressly the case with Ms. Griffith's third-party insurer(s). The Commission's assumptions are just that, and not based upon any evidence. The speculative nature of this type of conclusion is but one example as to why ***Griffith*** is being appealed. Turning to the matter at hand, Claimant presented no evidence at hearing or on reconsideration that there was any "exclusion" relevant to her argument.

Defendants seek the protection from this Court from conflicting interpretations of the Act from the State's administrative agencies. The Act itself contains a straight-forward process for submitting a claim and appealing any decision by the Guaranty Association. Defendants merely

request that the Court acknowledge the confines and strictures of the Guarantee Act and direct the Commission to structure its decisions accordingly.

IV. If the Industrial Commission does have subject matter jurisdiction, it should be directed to comport with the appropriate provisions of Idaho Insurance Guaranty Association Act.

Claimant's reliance again upon the ***Griffith*** decision with respect to Defendants' arguments about the ability, or lack thereof, for the Commission to award attorneys fees against the Guaranty Association is misplaced. Notwithstanding the fact that ***Griffith*** is also on appeal, the underlying reasoning of the Commission in ***Griffith*** for finding to the contrary is also misguided. In ***Griffith***, the Commission referred to an outdated case for the definition of the terms "damages," "punitive damages" or "exemplary damages." The Commission, and Claimant in the present matter, suggest that the discussion of the reasoning behind an award of attorney fees in the case of ***Dennis v. School District No. 91***, 135 Idaho 94, 98, 15 P.3d 329, 333 (2000) should be similarly applied in the present matter. However, this line of argument ignores the fact that the decision in ***Dennis***, although issued in the year 2000, is based upon reasoning originating in 1969.

This Court puts forth the proposition in ***Dennis*** that attorneys fees in worker's compensation cases matters should be deemed compensation to the injured employee instead of a penalty, which stems from the prior decision of ***Mayo v. Safeway Stores, Inc.***, 93 Idaho 161, 457 P.2d 400 (1969). Unfortunately, ***Mayo*** was decided prior to the adoption of the provisions in the Idaho Insurance Guarantee Association Act. The facts in ***Dennis*** did not involve a defunct surety or otherwise raise any questions germane to the current appeal. Therefore, the Court has never had the opportunity to address the relationship of I.C. § 41-3605(7) as it relates to I.C. §72-804.

This Court has previously noted that "Worker's compensation statutes must be considered in the context of the entire act." ***Idaho State Ins. Fund v. Van Tine***, 132 Idaho 902, 909, 980 P.2d 566 (1999) (internal citations omitted). In the same context, the availability, or lack thereof, to issue an award of attorney fees and costs in the present matter should be considered in the context of the Insurance Guaranty Association Act, which governs the party against whom fees are sought. The actions for which fees are sought in the underlying case relate to a decision made by the now defunct surety, not the Guaranty Association. Claimant presented no evidence or facts at hearing to justify why an award was warranted against the present Defendants.

V. Attorney Fees on Appeal.

Claimant has failed to present any foundation to establish why she would be entitled to an award of attorneys fees on appeal. For the reasons set forth in Defendants' opening brief and addressed above, it is questionable whether Claimant would even be entitled to an award of fees or costs under I.C. § 41-3605(7). The issues raised on cross-appeal are issues of first impression and do not warrant a finding that they were brought frivolously or without grounds. Claimant's reliance upon the decision in ***Griffith*** as a basis for fees in the present matter is unjustified. ***Griffith*** involves a separate set of facts and evidence, none of which is properly before the Court in this matter and should be used as the basis of any decision in that regard.

VI. Conclusion.

For the above and foregoing reasons, Defendants respectfully request that in the alternative the Court reverses and remands the Industrial Commission's final decision of the underlying matter, that it reverse the Commission's ruling on Defendants' Motion to Strike and that it address the issues raised with respect to the Industrial Commission's jurisdiction as it relates to the Idaho Insurance Guaranty Association Act.

RESPECTFULLY SUBMITTED this 21st day of June, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2010, I served a true and correct copy of the foregoing RESPONDENTS'/CROSS-APPELLANTS' BRIEF by delivering the same to each of the following attorneys of record, by U.S. Mail, postage prepaid, addressed as follows:

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